

Report to Planning applications committee
Date 8 May 2014
Report of Head of planning services
Subject Application nos 13/01540/VC Land and Buildings on the NE of King Street Norwich

Item
4(8)

SUMMARY

Description:	<p>Variation of Condition 9 from "Prior to the first occupation of the development mooring provision shall be provided on the river frontage in accordance with a scheme to be first submitted to and approved by the Council as Local Planning Authority and shall thereafter be permanently retained" to</p> <p>"Within 3 months of the date of this decision moorings shall be provided in full accordance with drawing numbers 046-M-1001, 046-SW-220 _ 046-FY-264/1 and shall be retained as such thereafter" of planning permission (App. No. 04/00274/F)</p> <p>'Conversion of former flour mills and redevelopment of site to provide 160 residential apartments and restaurant (Class A3) with associated car parking and landscaping' for the provision of moorings.</p>	
Reason for consideration at Committee:	<p>Objection</p> <p>This application was presented to 03 April 2014 Planning Applications Committee. During the presentation several members raised concern regarding the implications of the proposal for security and the potential for increased incidences of anti-social behaviour at the site. Following advice from officers members moved to defer the application in order to gain legal advice on the implications of taking enforcement action should the ultimate the resolution be one of refusal. The legal advice is summarised in paragraph 8 of this report.</p>	
Recommendation:	Approve	
Ward:	Thorpe Hamlet	
Contact Officer:	Mr Kian Saedi	Planner 01603 212524
Valid Date:	25th September 2013	
Applicant:	P J Livesey Country Homes (Eastern) Limited	
Agent:	P J Livesey Country Homes (Eastern) Limited	

INTRODUCTION

The Site

Location and Context

1. The site is located to the east of King Street between Carrow Bridge and Novi Sad Bridge and is the Read Mills Development which comprises the flatted residential blocks of The Malt House, New Half Moon Yard, New Ferry Yard, Albion Mill,

Spooners Wharf and Cannon Wharf. The River Wensum runs to the east of the site and forms part of the Broads. The site is located within the Norwich City Centre Conservation Area.

Planning History

04/00273/L - Demolition of non-listed buildings and alterations to former mill buildings and 213 King Street for conversion to residential use. (APPR - 29/10/2004)

04/00274/F - Conversion of former flour mills and redevelopment of site to provide 160 residential apartments and restaurant (Class A3) with associated car parking and landscaping. (APPR - 30/06/2005)

10/01696/D - Details of condition 9: mooring provision of previous planning permission 04/00274/F. (APPR - 29/10/2010)

12/01120/VC - Removal of Condition 9 of planning permission (App. No. 04/00274/F) for the provision of moorings and amendment of the S106 agreement associated with 04/00274/F to remove the requirement for provision of public access to the River. (REF - 27/07/2012, subsequent appeal dismissed)

Equality and Diversity Issues

There are no significant equality or diversity issues.

The Proposal & Background

2. The application seeks to vary condition 9 from "Prior to the first occupation of the development mooring provision shall be provided on the river frontage in accordance with a scheme to be first submitted to and approved by the Council as Local Planning Authority and shall thereafter be permanently retained" to "Within 3 months of the date of this decision moorings shall be provided in full accordance with drawing numbers 046-M-1001, 046-SW-220 _ 046-FY-264/1 and shall be retained as such thereafter".
3. The moorings were never provided and details were not agreed prior to first occupation. A scheme for the moorings was approved under application ref. 10/01696/D, which involved the provision of two pairs of mooring posts set between 1-1.5m from the west bank for demasting sail boats before passing the bridge. The mooring posts were 110m apart one 50m south of Novi-Sad Bridge and one 40m north of Carrow Bridge. The moorings were for short stay moorings with no overnight mooring and offered no access to the river bank.
4. Subsequent to this approval the applicant wished to explore an alternative solution whereby boats would moor up to the riverbank for demasting purposes. Such a solution was discussed with the Broads Authority who indicated that this would be acceptable subject to certain improvements to the riverbank at the two mooring locations. The solution was discussed but not formally agreed with officers who indicated that such a solution would work so long as the security of private parts of the development was achieved. The two mooring locations were in areas of narrow river bank adjacent to private basement parking areas where unauthorised access to the bank would be undesirable. Railings were subsequently discussed and erected to provide security, however this resulted in further security concerns being raised by residents of the development. These concerns related to potential unauthorised access to balconies from railings below as well as noise and disturbance from moored boats.

5. Planning application ref.12/01120/VC proposed to remove condition 9 of previous planning permission 04/00247/F. This application received officer recommendation for approval but the decision to refuse planning consent was decided at planning applications committee of 19 July 2012. The Council contended that the imposition of condition 9 was reasonable and necessary and application ref.12/01120/VC was refused because the loss of the proposed moorings was considered contrary to saved policy TVA3 of the adopted Local Plan and policy 18 of the JCS. Saved policy TVA3 of the Local Plan requires access by river craft to development sites and promotes access to the river for visitors and other users. Policy 18 of the JCS promotes the recreational value and navigational use of the river on sites close to the Broads.
6. This decision was subsequently appealed and the appeal was dismissed. The Inspector agreed with the Council's decision to refuse planning consent for the removal of condition 9 and found that the need for condition 9 "remains as necessary now as it was in 2005". The Inspector also gave significant weight to the Broads Authority's advice that de-masting/lay-by moorings should be provided at all four quadrants of a bridge to ensure safe de-masting on a lee shore. In coming to this decision the Inspector had regard for the living conditions of local residents and considered that any loss of privacy, noise or disturbance, or anti-social behaviour near the apartments could be minimised with careful attention to the location and configuration of the moorings on the river frontage. The appeal hearing was also told that limitations on the use of the moorings could be imposed by the landowner.
7. The current application seeks to vary condition 9, which can now technically not be complied with by virtue of being "prior to first occupation". Instead it is proposed to re-word the condition to provide moorings in accordance with the plans submitted with this application and then to provide the moorings within three months of the date of this decision.
8. Since the committee meeting of the 3rd April, legal advice has been provided regarding the implications of serving a breach of condition notice should the committee resolution be one of refusal. Section 187 A of the Town and Country Planning Act 1990 ("the 1990 Act") provides for enforcement of a planning condition by the breach of condition notice. Section 187 A holds that a breach of condition notice may be served upon any person who is carrying out or has carried out the development or any person having control of the land. It would therefore not be necessary to serve such a notice on parties with a leasehold interest in individual flats within the wider development and instead such a notice could be served on the developer and current freeholder of the site should members wish to resolve to refuse the application and pursue enforcement action to seek the implementation of the mooring scheme approved under reference 10/01696/D.

Representations Received

9. Advertised on site and in the press. Adjacent and neighbouring properties have been notified in writing. 29 letters of representation have been received citing the issues as summarised in the table below.

Issues Raised	Response
The previously approved provision allowed for demasting only, but has changed to providing “a mooring for all craft with a 2 hour limit and no overnight stay”. This subtle change allows for activity beyond demasting.	No time restriction on original (also refe Broads Authority comments) Se par. 20. , nothing changed from 2010 approved
Demasting points on the riverbank would go against the Planning Inspector’s Report to give careful attention to the location and configuration of moorings on the river frontage.	Par. 15, 16, 19-24
Impact on residential amenity (noise/disturbance).	Par. 15-19
The proposal represents a major fire risk.	Par. 25-27
Who will be responsible for any litter deposited on the bank?	Para 22
Antisocial behaviour associated with mooring for longer than permitted.	Para 22
Risk of crime.	Para 22 and 23
Who will be responsible for ensuring that the mooring restrictions are adhered to?	Landowner. Also, Broads Authority have certain powers over navigation on the river.
Positioning of moorings on wharf side requires agreement of the landowner.	See par. 29
The planning application has changed without consultation.	Par. 30
There is no other safety equipment buoys or escape ladders in this location.	Par. 28

Consultation Responses

10. The Broads Authority:

The Broads Authority expressed concerns with previous proposals to remove the layby moorings required by this consent and, accordingly, the Authority welcomes this new application.

The timescale proposed (within three months of the determination of this application) is considered reasonable and the proposed mooring detail is in accordance with the specification previously discussed.

Consequently, the Broads Authority supports this application and the in-river infrastructure it will deliver.

The mention of “in-river infrastructure” raised the possibility of the Broads Authority having seen the 2010 approved plans rather than the revised so the Broads Authority were re-consulted and directly sent the revised plans to avoid any possible confusion. In their follow up response the Broads Authority stated the following:

The basic thrust of the response is the same as previously stated: The Broads Authority welcomes the provision of demisting moorings in this location and considers the proposed timescale as appropriate

I Satisfied that the moorings proposed will, notwithstanding the revised locations,

provide a facility for boats navigating along this part of the Wensum.

Further comments were provided in response to some of the questions asked of them by the local planning authority and these are discussed further in the report.

Norfolk Fire and Rescue:

The moorings are far enough away from the car park vents and face of the flats, that they do not present an increased risk of fire spreading between them and endangering the occupants. Additionally, as moorings will be for temporary use only the boats will be licensed and hence subject to the boat safety inspections etc.

ASSESSMENT OF PLANNING CONSIDERATIONS

Relevant Planning Policies

National Planning Policy Framework:

Section 4 – Promoting sustainable transport

Section 7 – Requiring good design

Section 8 – Promoting healthy communities

Section 12 - Conserving and enhancing the historic environment

Relevant policies of the adopted Joint Core Strategy for Broadland, Norwich and South Norfolk 2014

Policy 2 – Promoting good design

Policy 18 – The Broads

Policy 20 - Implementation

Relevant saved policies of the adopted City of Norwich Replacement Local Plan 2004

HBE8 - Development in Conservation Areas

EP22 - High standard of amenity for residential occupiers

TVA3 – Waterborne tourism and river moorings

Supplementary Planning Documents and Guidance

Green Links and Riverside Walks adopted December 2006

City Centre Conservation Area Appraisal (September 2007)

Other Material Considerations

Written Ministerial Statement: Planning for Growth March 2011

Procedural Matters Relating to the Development Plan and the NPPF

The Joint Core Strategy and Replacement Local Plan (RLP) have been adopted since the introduction of the Planning and Compulsory Purchase Act in 2004. With regard to paragraphs 211 and 215-216 of the National Planning Policy Framework (NPPF), both sets of policies have been subjected to a test of compliance with the NPPF. Both the 2011 JCS policies and the 2004 RLP policies above are considered to be compliant with the NPPF. The Council has now submitted the emerging Local Plan policies for examination and considers most of these to be wholly consistent with the NPPF. Weight must be given to the emerging Local Plan and relevant policies are listed below for context although none change the thrust of the current Local Plan policies discussed in

the main body of this report:

DM1 - Achieving and delivering sustainable development

DM2* - Ensuring satisfactory living and working conditions

DM3* - Delivering high quality design

DM9 - Safeguarding Norwich's heritage

DM28* - Encouraging sustainable travel

* These policies are currently subject to objections or issues being raised at pre-submission stage and so only minimal weight can be applied in particular instances. However, the main thrust of ensuring adequate design and amenity is held in place through the relevant Local Plan policies listed above.

Principle of Development

Policy Considerations

11. Saved policy TVA3 of the adopted Local Plan sets out the requirements for riverside moorings. The policy requires development with a frontage onto the river to be designed to take advantage of the opportunities for access by river craft. In particular the policy sets out a requirement for provision of public moorings and appropriate bankside access at Cannon Wharf within 50m of Novi-Sad Bridge. Policy DM28 of the emerging Development Management Plan requires that where development adjoins a navigable section of the river, opportunities should be taken to provide residential and/or commercial moorings to facilitate access by water where this is appropriate and reasonably practicable to do so. Policy 18 of the JCS states that opportunities should be taken to maintain and enhance the recreational value and navigable use of the Broads.
12. Following the dismissal of the appeal against the decision to refuse application ref/12/01120/VC, the Inspector determined that the need for condition 9 requiring moorings to be provided remains as necessary now as it was in 2005 when imposed upon the original permission and significant weight was given to the Broads Authority's requirement for de-masting/lay-by moorings at "all four quadrants of a bridge".

Design of Moorings

13. The proposal will result in mooring posts being made available at all four quadrants of the river between the Novi Sad Bridge and Carrow Bridge. The Broads Authority have expressed their satisfaction with the proposal and the moorings will enable safe demasting on the lee shore of this stretch of the river. In turn, this will provide the conditions to ensure that river craft can safely navigate the stretch of river between Carrow and Novi Sad Bridge in accordance with saved policy TVA3 of the adopted Local Plan, policy 18 of the JCS and policy DM28 of the emerging Development Management Plan.
14. The mooring posts and iron fencing is considered of an acceptable design and will not result in any harm to the character or appearance of the conservation area. Only one new mooring post is to be installed, the remaining three will be refurbished to bring them up to an operational standard.

Impact on Living Conditions

Noise and Disturbance

15. In coming to his decision the Inspector stated that “provided that careful attention is given to the location and configuration of the moorings on the river frontage, this should minimise the risk of any loss of privacy, noise or disturbance, or anti-social behaviour near the apartments”. The Inspector did not state that moorings should be provided in the riverbed. The plans agreed in 2010 proposed two pairs of demasting mooring posts in the river bed 1-1.5 metres from the west bank, one 50m south of Novi-Sad Bridge and one 40m north of Carrow Bridge. The current application sees mooring posts proposed on the river bank with one 55m north of Carrow Bridge and one 65m south of Novi-Sad Bridge.
16. In terms of providing mooring posts on the river bank it would not be possible to locate the posts any closer to either bridge such is the raised level of the riverbank further towards each bridge. Both sets of mooring posts would be located adjacent to undercroft parking, above which are residential apartments.
17. Much concern has been raised regarding the potential for noise and disturbance to the neighbouring apartments resulting from people using the mooring provision.
18. The moorings are proposed to be temporary moorings (short stay, no overnight stay) provided to give boats demasting moorings before each bridge. This is the same as the mooring provision proposed and agreed as part of application ref. 10/01696/D. The applicant also proposes to attach a sign to each of the mooring poles indicating that the moorings are for short stay, lay by use and that no overnight mooring is permitted. Details of the sign would be conditioned as part of any approval.
19. The applicant has avoided locating the mooring posts directly opposite the flats at Albion Mills where residential units are located at ground floor level directly opposite the river frontage. Mooring posts in this location would have been more likely to raise issues of loss of privacy and noise disturbance for neighbouring residents. The mooring posts have instead been located opposite Spooners Wharf and Ferry/Half Moon Yard where car parking undercrofts are located at ground floor level with flats above. In terms of the potential for noise disturbance from people using the mooring provision (assuming no unauthorised use), the proposed location of the moorings is not considered to increase the potential for noise disturbance to neighbouring properties from the mooring posts in the river bed agreed in the 2010 scheme.
20. Whilst the applicant has not specified the length of time permitted by “short stay”, the Broads Authority have stated that the standard for demasting moorings at opening bridges (which Carrow Bridge and Novi Sad Bridge are), would be two hour maximum stay. The principle requirement for the moorings is to provide for mastng and demasting of sail boats, but the moorings could also provide a useful temporary mooring where another vessel might be travelling down the channel and thus reducing the size and width of the navigable channel. The Broads Authority have stated that restricting the use of the moorings to demasting only would be “impractical (and difficult to enforce)”. The Broads Authority has also stated that there would not be a need to leave the boat whilst using the mooring and signage should reinforce this.
21. The restrictions imposed on the moorings in terms of the duration of stay would be the responsibility of the landowner. The Broads Authority has referred to demasting

moorings that exist a short distance further upstream adjacent to St James' Mill. These moorings are short stay/demasting and the Broads Authority are not aware of there being any incidence of overstaying at these moorings. A condition will be added to approval requiring detail of signage to be submitted to the local planning authority for approval and this will ensure that clear notification of the mooring restrictions is provided.

22. Much concern has been raised about the increased potential for disturbance, anti-social behaviour, crime and littering to occur due to the moorings being on the bank. As already stated by the Broads Authority, demasting does not require people to leave the boat at any stage during the demasting process. Departing the boat and entering private land would therefore constitute an act of trespassing and civil offence. There is no reason to believe that positioning the moorings on the river bank will increase the incidence of crime, anti-social behaviour or trespassing, and the moorings are available to river craft only for the purposes of navigating the river. There is no reason to suspect that people will drop litter on the river bank, but in such an event responsibility would fall to the landowner for its proper disposal.
23. Furthermore, the applicant proposes to secure the mooring area with 6ft wrought iron fencing to improve security on the site.
24. It is therefore considered that the location of the mooring posts is acceptable with regards to avoiding any significant noise or disturbance to neighbouring properties and that the proposal accords with saved policy EP22 of the adopted Local Plan.

Other issues

Fire risk

25. Representations have raised concern regarding the increased risk of fire that will result from boats mooring close to the parking undercroft. Norfolk Fire and Rescue have been consulted on the application and have stated that the moorings are far enough away from the car park vents and face of the flats that they do not present an increased risk of fire spreading between them and endangering the occupants. Additionally, as moorings will be for temporary use only the boats will be licensed and hence subject to the boat safety inspections etc.
26. The Broads Authority have stated that all boats must be tolled and in order to be tolled, boats must show evidence of appropriate insurance and have the relevant boat safety scheme certificate. Fire safety on boats is included as part of the safety scheme.
27. It is therefore considered that the risk of fire from boats moored adjacent to the flats is not a significant issue and does not affect the acceptability of this proposal.

There is no safety equipment, buoys or escape ladders in this location

28. The Broads Authority has stated that the provision of escape ladders etc is not required in this instance. There are historic moorings already in place at the site and a number of means of escaping the water are provided, including the presence of ladders and low banks at a reasonably close distance to both of the proposed new demasting moorings. Most falls/incidents are also understood to occur when

disembarking from boats, which the demasting of a boat would not necessitate.

The positioning of the moorings on the wharf side requires the agreement of the landowner

29. Whilst the ownership of the land is understood to have changed hands since the submission of the original application, the applicant has completed the correct ownership certificate in the application form and indicated that they have given requisite notice on the landowner. Any development would require the consent of the landowner, but this would amount to a civil matter.

The planning application has changed without consultation

30. The Council has served requisite notice for the purposes of this application. Direct notification has been sent to neighbours and the application has been advertised on site and in the press.

Procedural guidance

31. Any approval of the variation would issue a new consent which could be implemented independently of the original outline consent and therefore it is necessary to re-impose any conditions which are not subject to the request for variation under this application. It will also be necessary to link the S106 agreement for the original consent to any new consent via a deed of variation to the original agreement.
32. Certain conditions of the original planning consent (04/00272/F) have not been discharged nor had details agreed. The appeal decision for previous application 12/01120/VC contained a list of suggested conditions that would have been re-imposed had planning permission been granted for that application. These conditions along with the revised condition 9 and a condition requiring details of the signage should be imposed upon any approval.

Conclusions

33. The proposal will provide moorings at all four quadrants of the stretch of river between Carrow Bridge and Novi Sad Bridge. This will enable river craft to safely demast and navigate the river. The location of the moorings on the river bank is considered acceptable and will not result in any significant harm to the amenity of neighbouring residents. The moorings are for demasting only and signage will ensure that people are properly notified of the associated mooring restrictions, including a restriction on the duration of stay and that boats should not be disembarked whilst moored. Subject to conditions therefore, the proposal is considered acceptable and in accordance with the objectives of Sections 4, 7, 8 and 12 of the National Planning Policy Framework (March 2012), Policies 2, 18 and 20 of the Joint Core Strategy for Broadland, Norwich and South Norfolk (2014), saved policies TVA3, HBE8 and EP22 of the City of Norwich Replacement Local Plan (2004), relevant policies of the Development Management Policies Development Plan Document – Pre submission (April 2013) and all other material considerations.

RECOMMENDATIONS

Recommended to approve application 13/01540/VC subject to the completion of a deed of variation to link the former obligations of the S106 agreement (linked to permission 04/00274/F) to the new consent and the following conditions:

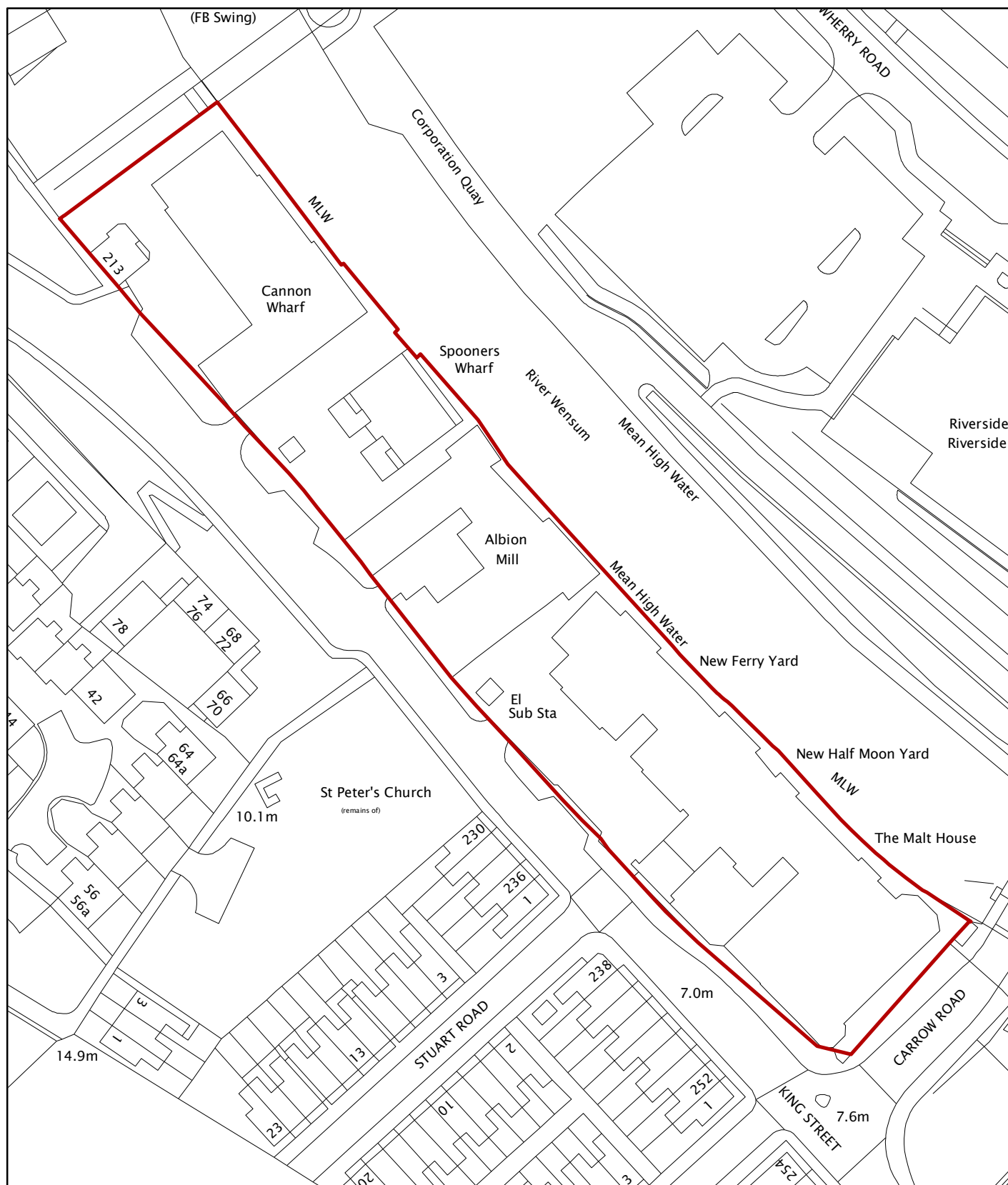
- 1) Within six months of the date of this decision landscaping, planting and site treatment works shall be completed in full accordance with a scheme to be submitted to and approved in writing by the local planning authority. The scheme shall provide landscaping details of the north, south and east boundaries of the site with Novi-Sad Bridge, Carrow Bridge and the River Wensum respectively and shall include the following details:
 - Details of the materials for the paved areas
 - Details of all new boundary treatments at the site
 - Details of new lighting
 - Planting plans
 - Planting schedules
 - Written specifications

The landscaping scheme shall thereafter be retained in accordance with the approved details

- 2) Any trees or plants which comprise part of the landscaping scheme and within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season.
- 3) Cycle parking, refuse storage, access, car parking and forecourt areas of site shall be retained in perpetuity and made available for use by residents of the development
- 4) Within three months of the date of this decision moorings shall be provided in full accordance with approved drawings and retained as such thereafter
- 5) Mooring signage to be submitted for approval prior to installation. Signage to be retained in perpetuity thereafter.

Article 31(1)(cc) Statement

The local planning authority in making its decision has had due regard to paragraph 187 of the National Planning Policy Framework as well as the development plan, national planning policy and other material considerations and has approved the application subject to appropriate conditions and for the reasons outlined in the committee report.



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Planning Application No 13/01540/VC

Site Address

Moorings

King Street

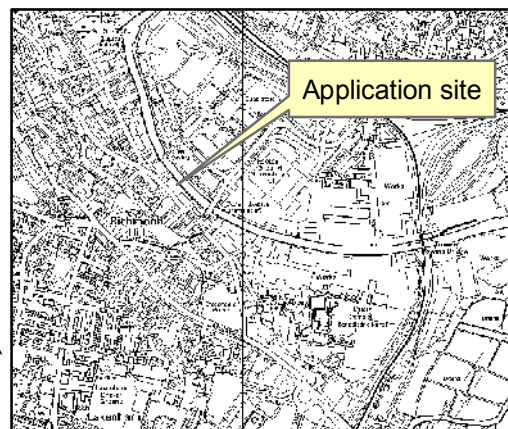
Scale

1:1,000



NORWICH
City Council

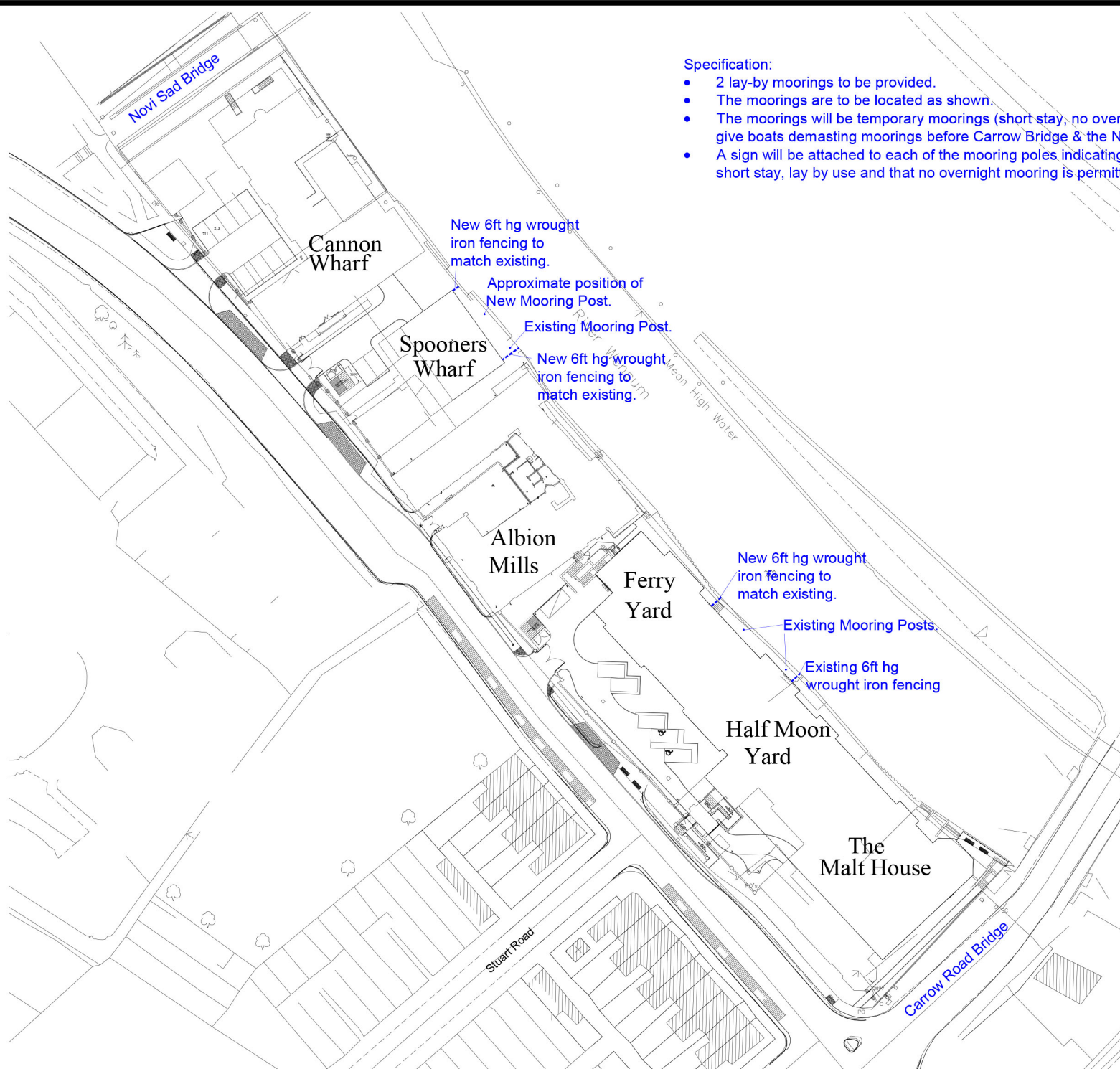
PLANNING SERVICES





Specification:

- 2 lay-by moorings to be provided.
- The moorings are to be located as shown.
- The moorings will be temporary moorings (short stay, no overnight stay) provided to give boats demasting moorings before Carrow Bridge & the Novi Sad Bridge.
- A sign will be attached to each of the mooring poles indicating that the moorings are for short stay, lay by use and that no overnight mooring is permitted.



WARNING
Dimensions must not be scaled from this drawing.
Dimensions required are to be obtained from the
drawing office

Proposed Mooring Positions

046-M-1001

Scale 1:500	Date Sept. 2010
Drawn DMM	Checked

**Former Read Mill Site
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Norwich
Norfolk**

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